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The protection of internal security and constitutional order as exemplified by the tasks and activity of the Internal Security Agency – a critical analysis of *de lege lata* and *de lege ferenda* regulations

Abstract: The main objective of the paper is to present the issues of the protection of internal security and constitutional order in view of the tasks and activities of the Internal Security Agency in Poland. The author of the text seeks answers to the following questions. (1) To what extent does the lack of clear-cut frames for the ISA's activity influence the instrumental use of this agency? (2) Do over-generalised legal regulations on the ISA's activities lead to poorer efficiency of this agency's operations? (3) Does faulty regulation related to the ISA's range of activities result from inadequacies in Polish legislation, or maybe from the intention to endow the special services with greater freedom of action?

In reference to the above questions, the author puts forward the following theses: (1) the selected and analysed legal instruments exert an infinitesimal influence on the scope of the application of "special measures", such as the operational control or access to telecommunications data. Art. 3 of the Bill of 2014 contains too many vague terms or expressions whose legal definitions are missing from Polish legislation; (2) it seems reasonable that the range of the ISA's activities has been restricted, e.g. as regards drug-related crime. However, other areas of the ISA's interest have witnessed few changes, and its impromptu involvement with specific threats and offences is left to the 'political decision' of the Head of the ISA and the Minister of the Interior; (3) the impractical solutions are partly a result of an inadequate 'legislative culture', in this case, at the level of the Ministry of the Interior. This shortcoming might be the result of excessive haste during work on the Bill; nevertheless, such works always carry a political load, which means that the interests of the services themselves, as well as of the state, played an enormous role in this project.

Key words: internal security, constitutional order, Internal Security Agency

Introduction

The main subject of this analysis is the range of tasks within the framework of the Internal Security Agency's (ISA – Agencja Bezpieczeństwa Wewnętrznego) activities, which is laid out by the Polish legislature pursuant to the Act on the Internal Security Agency and Foreign Intelligence Agency as well as the Bill on the Internal Security Agency (the Act of 2002; the Bill of 2013; the Bill of 2014). In the first case, the analysis will focus on Art. 5 para. 1–2 of the Act of 2002, while in the second case, it will concentrate on Art. 3 para. 1–2 of the Bill of 2013 and 2014. While analysing the above legal regulations, it is crucial to highlight their axiological, functional, and teleological interpretations. The legal interpretation, due to the methodology applied, will be reflected directly in the analysis of the Act on the ISA and its two Bills. Moreover, in view of the ongoing legislative process, it

is of key importance to conduct a comparative interpretation between the regulations currently in force and various versions of the provisions specifying the tasks of ISA (Cf. Wronkowska, Ziemiński, 1997, p. 147–179). Apart from the already mentioned aspects, the analysis should comprise the practices and the activities of the Internal Security Agency itself.

The questions that should be posed in relation to the analysed issues are as follows. (1) To what extent does the lack of clear-cut frames for the ISA's activity influence the instrumental use of this agency? (2) Do over-generalised legal regulations on the ISA's activities lead to poorer efficiency of this agency's operations? (3) Does faulty regulation related to the ISA's range of activities result from inadequacies in Polish legislation, or maybe from the intention to endow the special services with greater freedom of action? The aim of these questions is to point to the primary objective of ISA's activity (the scope and range of its competences) – the protection of internal security and constitutional order (Art. 1 of the Act of 2002 and the Bill of 2014 Art. 1 para. 1).

In the period 2013–2014, we had an opportunity to witness the works in progress on separate acts regulating the activity of the Internal Security Agency and Foreign Intelligence Agency; consequently, this text comprises a comparative analysis of *de lege lata* (the Act on ISA and FIA of 2002) and *de lege ferenda* (the Bill of 2013, the Bill of 2014) regulations.

Within the meaning of the administrative law, the ISA is a government institution with one-person leadership, centralisation of powers, a reporting line and hierarchical subordination. The Head of the Internal Security Agency is a central authority of the government administration and reports directly to the Prime Minister (Art. 3 para. 1–2 of the Act). The activity of the Head of the ISA is controlled by the legislative authority, i.e. the Sejm, as stipulated in Art. 3 para. 3 of the Act. As regards the Bill, the legislator indicated that the Head of the ISA should report directly to the Minister for the Interior, subject to the powers of the Prime Minister as set out in the Act (Art. 2 para. 2–3) (Bożek, 2014, p. 39–41; Prusak, 2012, p. 119–147; Szymonik, 2011, p. 187–188).

In view of the latest research in the area of security, it has become evident that the notion of security is subject to a continuous development of its subjective and objective scope, which, unfortunately, exerts a negative influence on this discipline, even though it has acquired an organisational legal basis within the structures of the system of higher education. Forming a discipline, its representatives are making attempts to justify their research activity by developing suitable instruments and seeking a specific theoretical and methodological justification. This is worth mentioning only in reference to the securitisation of life and the search for the legitimacy of these actions through the findings of the security sciences. Securitisation may be exemplified by security of information, which has recently gained importance in relation to the state's internal security and economic security, not to mention citizens' safety. In the case of the legislators' and the special services' interests, there often emerges a conflict of interests between state and society, which results in increasing intervention of the state in the private lives of its citizens and in the further development of various control mechanisms (Rosicki, 2014, p. 145–154; Żakowski, 2014, p. 12–14). The above problem will be analysed through legal measures related to the material scope of the tasks of the Internal Security Agency in Poland.

The Act on the Internal Security Agency and Foreign Intelligence Agency of 2002

The material scope of the ISA's activity is specified in Art. 5 para. 1–2 of the Act on the Internal Security Agency and Foreign Intelligence Agency (Act of 2002; Cf. Karpiuk, 2014, p. 92–94). The catalogue indicated by the legislator comprises the following tasks.

- 1) Identifying, preventing, and eliminating the threats posing risk to the State's internal security and its constitutional order, in particular, its sovereignty and international position, independence and inviolability of its territory, as well as the State's protection.
- 2) Identifying, preventing, and detecting serious crimes such as espionage, terrorism, infringement of State secrets, as well as other criminal offences threatening State security.
- 3) Identifying, preventing, and detecting crimes threatening the State's economic security.
- 4) Identifying, preventing, and detecting criminal offences such as corruption among persons performing public functions, if the said crimes endanger the State's security.
- 5) Identifying, preventing, and detecting criminal offences regarding the production of and trade in commodities, technologies, and services of strategic importance for the State's security.
- 6) Identifying, preventing, and detecting crimes regarding illegal production, possession, and trade in weapons, ammunition, explosives, and weapons of mass destruction, as well as narcotic and psychotropic substances in international circulation, and prosecuting the perpetrators.
- 7) Protecting classified information and exercising the State's security powers regarding the protection of classified information in international relations.
- 8) Acquiring, analysing, processing and providing the competent authorities with information essential for the protection of the State's internal security and its constitutional order.

Moreover, it should be emphasised that any additional tasks of the ISA may result from other acts of domestic law and international treaties. As an example here may serve Poland's obligations towards the European Union as regards the Act on the ISA and FIA that nominates the Head of the ISA as the primary contact point for the exchange of information crucial for prevention of terrorism (Art. 5 para. 3; also Art. 16 para. 3 of the Council Decision 2008/615/JHA).

The urge for the specification of the material scope of the ISA's activities results from the need to identify the legal basis for this special service, which in a democratic state based on the rule of law seems to be a fundamental legal basis for the functioning of state institutions. The ISA's tasks cover a whole variety of areas, which currently, while Poland has a dozen or so special services, seems to be a rather controversial solution. The presence of a large number of special services with a wide spectrum of competences might, to a large extent, affect the performance of these services, while on the other hand it gives the state the ability to intrude extensively with implied instrumental use of the said special services for political purposes and the breach of privacy. On the one hand,

there is the state's interest (security, protection, constitutional order), and on the other, there are issues of the breach of privacy and/or unjustified state powers to dispose of information on its citizens. As regards the tripartite separation of powers at the general level, various mechanisms of control have been developed; in the case of the special services, whose specific area of action lies at the core of their existence, society disposes of few instruments to verify their activities. This may lead to mistrust and continued suspicion of the illegality of their actions (e.g. breach of privacy). This clash results from the fact that contemporary democracies are based on the transparency of the actions of their institutions, whereas special services cannot provide comparable transparency of their activities (Cf. Grochowski, 2013, p. 195–207).

The specification of tasks, i.e. the material scope of the ISA's activity, in its operative (postulatory) part should provide a statutory basis for the services' functioning, however, the above solution gives a considerable range of actions. It is doubtful whether this solution will bring about the two desired effects, which are as follows: (1) effective performance of the special services due to their specialisation in combating specific threats, (2) combating the uncontrolled intrusion into citizens' private lives.

In the first case, the great number of services and special services endowed with a specific type of powers is worth emphasising, which results in a lack of effectiveness due to the wide scope of tasks assigned to them, as well as their organisational failure. In effect, the tasks of particular special services tend to be duplicated, e.g. in the field of economic offences or crimes related to narcotics (Internal Security Agency, Central Bureau of Investigation, and Central Anti-Corruption Bureau). Even if this state of affairs is to be considered 'normal' (in view of the functioning of other special services in the world), it is still questionable how the problem of co-ordination of actions should be solved. Although the tasks have been clearly specified, within the meaning of the Act the ISA is responsible for everything and nothing, which means that since its foundation (formerly, the Office for State Protection, or UOP) this institution has failed to develop its own profile of activity. The modifications projected for the year 2015 envisage restrictions in the scope of the ISA's activities, which seems quite reasonable in this case. Unfortunately, the analysed provisions, as set out in the Bill, fail to reflect the above plans. However, the new regulations will remove part of the ISA's powers, such as combating narcotics and corruption, which seems appropriate.

It should be also noted that the ISA's poor performance might result from an inadequate training and recruitment system, which ensues from an instrumental approach to the uniformed services in general and special services in particular. It has been reported that candidates have attained officer ranking after only a few days of training, which is a parody of the training cycle, and prevents the emergence of a strong ethos in special services circles. Cases have been reported that in the Government Protection Bureau a candidate could become an officer just after 11 days of service, in the Military Counter-Intelligence Services – after 17 days, and in the ISA – after one month of service (Kublik, Czuchnowski, 2008). It can be concluded that the greatest threat to the ISA is its politicisation, which is related to a specific 'HR policy' that does not take into account the skills and qualifications of the candidates. This problem, however, cannot be solved through new proposals, as it is a "problem of political culture" (Rosicki, 2013a).

The lack of professionalism and over-politicisation, seen as pathologies in special services circles, compel us to deeper analyse the subject, especially in view of the special powers vested in these services (e.g. in the fields of operational control and access to the information related to telecommunications secrets). As regards the social sphere, it may affect the issue of the breach of privacy, while in the public sphere it may exert an impact on the transparency of political life (Rosicki, 2013b, p. 77–96).

The Bill on the Internal Security Agency (2013/2014)

The Bill, as compared to the Act on the ISA, was to specify the tasks of this special service in a precise way. However, while it pinpointed the ISA's tasks as regards the identification, prevention and detection of crimes (directly, i.e. through indicating a catalogue of specific criminal offences referred to in the penal code and penal fiscal code), its further content raises serious doubts.

First of all, the Bill maintains a division of tasks (as compared to the Act of 2002): (1) identifying, preventing, and eliminating threats that pose risk to the State's internal security and its constitutional order (Art. 3 par. 1 item 1) and (2) identifying, preventing, and detecting criminal offences (Art. 3 para. 1 item 2). In the former case, there is no direct reference to crimes, but to the circumstances threatening the state's internal security and its constitutional order. The legislator provided an exhaustive list (*numerus clausus*) of these threats.

- 1) Infringing the independence, sovereignty, international position, and inviolability of the State's borders (including the espionage, other threats posed by foreign intelligence services, comprising detection through the signals of counter-intelligence and electronic counter-intelligence methods).
- 2) Posing risk of a terrorist attack.
- 3) Ensuing from the promotion of a totalitarian system, calling for the overthrow of democracy, or the use of violence and unlawful threats, public insult or encouraging hatred towards other nationalities, ethnicities, races, confessions and religions, or for reasons of the lack of any religious denomination.
- 4) Infringing the State's economic security with particular consideration given to the corporations (*Act of 18 March 2010 on specific powers of the minister competent for the Treasury and on their execution in certain corporations or groups of companies engaged in business activity in the sectors of electricity, oil, and gaseous fuels*, Polish Journal of Laws No. 65, item 404).
- 5) Threatening the security of classified information and processed data in the electronic information and communication system of particular significance for the State's security, indispensable for the continuance of the functioning of public administration or the elements of "critical infrastructure" within the meaning of regulations on crisis management.
- 6) Related to unauthorised international trade of commodities, technologies, and services referred to in the *Act of 29 November 2000 on the international trade of commodities, technologies, and services of strategic importance for the security of the State as well as for the maintenance of peace and security* (Polish Journal of Laws of 2013, item 194).

The Bill, as compared to the Act of 2002, comprises a greater number of threats posing risk to the state's internal security and its constitutional order; however, in the Bill, the enumerated threats form an exhaustive list (*numerus clausus*). It should be pointed out that this solution only apparently restricts the ISA's tasks, as the threats referred to in Art. 3 para. 1 item 1 are represented by vague terms and notions, such as: "security of the State," "economic security," "international position," "signals of counter-intelligence methods."

What is more, the Bill of 2013 introduced categories of threats of a terrorist and extremist nature. Here, it should be emphasised (and also concluded) that the notion of "threats posing risk to the State's internal security and its constitutional order" is wider than the notion of a "criminal offence." In the case of threats of a terrorist nature, they can be defined by analogy to the Polish Penal Code, Art. 115 para. 20: "it is an offence punishable by a penalty involving deprivation of liberty for the period of at least 5 years, committed in order to: (1) seriously intimidate a large number of people, (2) compel the public authority of the Republic of Poland to perform or refrain from certain activities, (3) evoke serious disturbance in the State system or in the economy of the Republic of Poland or of any other country or international organisation – as well as threats of such acts" (*The Penal Code*). This means that any deed fulfilling the above criteria constitutes an offence of a terrorist nature. In consequence, such crimes as rape might be categorised as an offence of a terrorist nature (e.g. while blackmailing state authorities: "if you do not change your decision, I will rape this person").

Similarly, the Bill of 2014 maintains the definition of "threats of a terrorist nature", which endows the ISA with considerable freedom of action. However, the decision to remove the provision on "threats of an extremist nature", which was present in the Bill of 2013, appears as right and true (Art. 3 para. 1 item 1 subsection c). It has been replaced with a list of selected offences as referred to in *inter alia* two chapters of the Polish *Penal Code* ("crimes against peace, mankind, and war crimes" as well as "crimes against the Republic of Poland"). Simultaneously, the notion of "crimes of an extremist nature" has been removed from the list of tasks comprising identification, prevention, and detection of criminal offences (Art. 3 para. 1 item 2 subsection c). Due to this, the law has gained greater coherence and a provision that failed to meet the basic requirements of "principles of legislative technique" has been removed (Cf. *Regulation of 20 June 2002*). Previously, the offences of an "extremist nature" have not been defined in the criminal law (including the *Penal Code*), and, what is more, the exhaustive list of offences of an "extremist nature" as referred to in Art. 3 para. 1 item 1 subsection c provided a typification of crimes not consistent with the *Penal Code* (*Evaluation...*, 2013).

Furthermore, the notion of "economic security" raises serious doubts, as it lacks a formal definition in legal regulations, which endows the ISA with considerable freedom of action in this respect. The above doubts could not be allayed even by the provision that the scope of the ISA's competence refers to the "economic security" especially related to the functioning of corporations or groups of companies engaged in business activity in the sectors of electricity, oil, and gaseous fuels. However, it should be emphasised that the ISA did have its competences restricted as regards fiscal offences (i.e. crimes leading to material loss or offences against the treasury as well as criminal offences causing a decrease in public receivables), which is stipulated in the Art. 3 para. 1 item 2 of the 2014

Bill. The restriction relates to a clearly defined value of the damage or decrease in public receivables. However, although the above provision does limit the scope of the ISA's activity, in practice, it might be quite confusing to define the type of damage and value precisely. Simultaneously, it should be stressed that Art. 3 para. 1 item 2 constitutes a starting point for the request for "operational control" (Art. 27 of the Act of 2002 and Art. 21 of the Bill of 2014). The lack of a clear definition of crimes and threats "infringing the State's economic security" has already been pinpointed as an urgent problem in the articles in the journal published by the Internal Security Agency (Grzemski, Krześ, 2010, p. 149–156). Irrespective of the above, the problem still requires solving, as it has been omitted in the Bill.

The issue of economic security is of paramount importance in view of the new challenges presented by new technologies and financial instruments. Moreover, considering the ISA's effective performance, its involvement in two areas of interest should be taken into account: (1) the prosecution of VAT offences and (2) the protection of strategic corporations and groups of companies.

In the former case, it is worth emphasising the fact that within the area of economic security the ISA's main focus was on prosecuting VAT offences (Report, 2012; Report, 2013; Report, 2014), which raises the following question: Is it appropriate that a special service of a counter-intelligence nature concentrates on this type of threats and offences? Even if the damages incurred by the treasury were of a considerable value, there remains the issue of specialisation of particular services. Therefore, another question arises here: does Poland really need another special service, i.e. a Treasury Intelligence Department?

It would be far more appropriate if the ISA focused on combating offences such as money laundering and/or threats posing a risk to the functioning of strategic corporations. For Poland, energy, raw materials, and chemical companies will become a priority, as exemplified by the attempt at a hostile take-over of the Polish Tarnów Group by the Russian Acron company and the subsequent systematic increasing of their joint holdings of Grupa Azoty above the 20% mark, which allowed them to delegate a member of the Supervisory Board and access the company's data (Malinowski, 2014). Another company, KGHM Polish Copper Inc., may experience similar problems in future resulting from the consolidation of the global copper ore market and the activities of Chinese companies. Moreover, it is difficult to secure the KGHM group of companies against new investment strategies, e.g. it is hard to assess the financial risk of the functioning of KGHM International Ltd. and individuals in Chile, the United States, and Canada. New threats require skilled and qualified analysts and a team of specialists trained to prevent economic threats or to detect economic offences. The truth is that the Polish law enforcement authorities have failed to fully explain the Amber Gold fraud (a pyramid scheme), which was widely covered in the media in the period of 2012–2013.

Another problem is the urge to transform the ISA (at least in the plans of the Minister of the Interior, at the time of writing, B. Sienkiewicz) into a more analytical service, which would restrict its competences in the field of investigation. This appears a highly risky decision, even one threatening state security in view of the new types of dangers (information security, economic security). One of the ISA's failures is the so-called 'Vistulagate' (or 'tape affair') of 2014, when illegal recordings of private conversations of politicians, including the Minister of the Interior, B. Sienkiewicz, and the President of

the National Bank of Poland, M. Belka, were released (*Full recording...*, 2014; Zawadka, 2014). It should be noted here that it was B. Sienkiewicz himself who supervised the activities of the special services, therefore, in this case, he has learnt the hard way how important information security is, and what the consequences of a lack of security procedures could be. It also seemed risky (considering political standards and procedures) to allow B. Sienkiewicz to remain in office as Interior Minister, supervising proceedings related to himself.

Why mention the 'Vistulagate' scandal? Because the ISA is a special service that bears statutory responsibility for the security of classified information and data in the communications system essential for state security. The whole process of recording conversations between the most important persons in Poland lasted one year at the least; it is still unknown how many people have been recorded. A special investigation team, including officers from the ISA and the Central Bureau of Investigation, has been appointed to deal with this problem. The fact that the ISA was forced to seek support from other special services does not give a good impression of its functioning as the service responsible for information security. This means that the ISA, at the stage preceding the reform, has very poor potential for investigative activities.

As regards the identification, prevention, and detection of offences, in comparison to the Act of 2002, the Bill of 2014 (Art. 3 para. 1 item 2) presents specific offences with no description, which seems quite reasonable in view of the above mentioned problems with interpretation. In practice, it will not restrict the scope of the ISA's activity, as these are the same offences that in the previous solution were defined by specifying the damage or the type of crime.

Despite the fact that the dubious typification of offences was removed from the Bill of 2014, there remains a problem defining crimes of a "terrorist nature". As an example here may serve the provision in Art. 3 para. 1 item 2 subsection b stipulating that the range of detection activities of the ISA shall comprise criminal offences specified in Art. 168 and Art. 175 of the *Penal Code*, if they constitute a prelude to committing a crime of a "terrorist nature." Therefore, the ISA deals with instances of the preparation for "generating a disaster," "posing a public danger," "seizing a ship," "placing dangerous equipment or toxic substances aboard a ship," or "generating a communications disaster." The problem is that an offence can be categorised as a crime of a "terrorist nature," only if it is punishable by a maximum of 5 years of imprisonment, whereas the deeds specified in Art. 168 and 175 of the *Penal Code* are subject to a maximum of 3 years of imprisonment.

Operational control and access to telecommunications secrets

The text analyses the scope of the ISA's activities consisting in the identification, prevention, and elimination of threats posing a risk to the state's internal security and its constitutional order, as well as in the identification, prevention, and detection of criminal offences. The above issues are of great importance, as the special services are authorised to use specific methods and apply specific measures such as operational control and access to telecommunications data. The lack of a precise definition of the ISA's tasks in Art. 3 of the Bill of 2014 authorises these services to apply the above-mentioned mea-

asures at their discretion. It should be emphasised that operational control might be applied while identifying, preventing, and detecting criminal offences that have been specified in Art. 3 para. 1 item 2 subsections a–g, whereas telecommunications data might be accessed only while identifying, preventing, and eliminating threats posing a risk to the state's internal security and its constitutional order as specified in Art. 3 para. 1 item 1 subsections a–f. Moreover, it should be noted that the legal basis for accessing telecommunications data is: (1) carrying out counter-intelligence activities, (2) executing, within the limits of one's competence, tasks related to the protection of classified information as well as exercising functions of the National Security Authority in the area of the protection of classified information in international relations, (3) acquiring, analysing, processing, and providing the competent authorities with information that might be crucial for the state's internal security and its constitutional order, (4) executing and issuing of validation documents, (5) keeping special types of records (of operational interests; incidents and situations of a terrorist nature; a list of persons that might be related to offences of a terrorist nature).

Special consideration should be given to phrases such as: “carrying out counter-intelligence activities” and “acquiring, analysing, processing, and providing the competent authorities with the information essential for the protection of the State's internal security and its constitutional order.” The above wording is extremely vague, which means that anything can constitute a legal basis for a request for telecommunications data. Neither Polish legislation, nor the Bill of 2014 includes legal definitions of “counter-intelligence activities” or “essential information.” This generates a conflict of interests between the state and its citizens, as the ISA is not obliged to justify the need for the application of certain measures. In view of these provisions, it can be concluded that the new regulations have failed to change anything in the new Act – the use of special measures in accessing data has not been restricted, nor has it been narrowed down to specific instances.

Another dubious provision is stipulated in Art. 21 of the Bill of 2014 that provides an opportunity to conduct operational control, the basis of which are the tasks specified in Art. 3 para. 1 item 2, if other measures seem inefficient or inadequate. Nevertheless, the said article indicates that operational control is ordered by a court, by way of a decision, on the written request of the Head of the ISA, with the prior written consent of the General Prosecutor, if operational control is to be applied to a citizen of the Republic of Poland. In other cases, the operational control is ordered by the Head of the ISA (Art. 21 para. 4 items 1–2), which results in the unrestricted application of operational control to the citizens of other countries. Such a solution might constitute a matter of dispute, as Poland is an EU member state and as such should respect ‘European’ standards of human rights.

Conclusion

The main aim of this text is to present the issues of protection of internal security and the constitutional order in light of the tasks and the activities of the Internal Security Agency. It should be noted that it was not the aim of the analysis to refer to all the problems related to the functioning of the Internal Security Agency – the author has decided to

select only a couple of issues. In the first instance, the text analyses the Act on the Internal Security Agency that is currently in force (*de lege lata* regulations). Subsequently, it reviews the selected amendments to the Act, i.e. the Bills of 2013 and 2014 (*de lege ferenda* regulations).

In reference to the questions posed in the introduction, a number of hypotheses can be proposed, along with arguments in favour of the latter. As regards the first question, it should be stressed that the selected and analysed legal measures only in an infinitesimal way influence the scope of the ISA's activities, which provides this special service with opportunities to abuse the powers granted in relation to the application of certain "special measures," such as operational control or access to telecommunications data. Art. 3 of the Bill of 2014 comprises too many vague terms and expressions whose legal definitions are missing from Polish legislation.

In the case of the second question posed in the introduction, it should be concluded that it seems reasonable that the range of the ISA's activities has been restricted, e.g. as regards drug-related crime. However, other areas of the ISA's interest have witnessed few changes, and its impromptu involvement with specific threats and offences is left to the 'political decision' of the Head of the ISA and the Minister of the Interior. A growing number of threats related to information and economic security will require either a higher degree of specialisation of special services, or the further development of the latter. However, the second alternative is arguable in view of the objectives to be achieved by the Ministry of the Interior – namely, reductions in the number of ISA's personnel.

As regards the third question, it should be noted that the impractical solutions are partly a result of an inadequate 'legislative culture', in this case, at the level of the Ministry of the Interior, an authority responsible for the preliminary works on the Bills. This shortcoming might be the result of an excessive haste during work on the Bill; nevertheless, such works always carry a political load, which means that the interests of the services themselves, as well as of the state, played an enormous role in this project, leaving a wide space for interpretation.

The text does not comprise a detailed analysis of legal measures in the area of operational control and access to telecommunications data. Another interesting issue is the new legal measures related to the ISA's access to special types of information, which is reflected in keeping special types of records: of operational interests; incidents and situations of a terrorist nature; a list of people that might be related to offences of a terrorist nature. Therefore, it is essential to continue the thorough analysis of the issues concerning the protection of the state's internal security and constitutional order in relation to the tasks and activities of the Internal Security Agency – focusing on the issues of information security and combating terrorism.

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Ochrona bezpieczeństwa wewnętrznego i porządku konstytucyjnego na przykładzie zadań i działań Agencji Bezpieczeństwa Wewnętrznego – analiza krytyczna przepisów *de lege lata* i *de lege ferenda*

Streszczenie

Głównym celem artykułu jest przedstawienie problematyki ochrony bezpieczeństwa wewnętrznego i porządku konstytucyjnego przez pryzmat zadań i działań Agencji Bezpieczeństwa Wewnętrznego w Polsce. W tekście przedstawiono kilka pytań: (1) W jakim stopniu brak szczegółowego określenia zakresu działalności ABW wpływa na instrumentalne wykorzystanie tej służby specjalnej? (2) Czy dość ogólne regulacje prawne, w zakresie zadań ABW, wpływają na niższą efektywność działania tej służby specjalnej? (3) Czy niewłaściwy sposób regulacji kwestii związanych z zadaniami ABW wynika z niskiego poziomu legislacji polskiego legislatora, czy może z chęci pozostawienia służbom specjalnym dość dużej swobody działania?

W związku z pytaniami przedstawiono następujące stwierdzenia: (1) wybrane i analizowane rozwiązania prawne nie zmieniają zbytnio, zakresu stosowania "specjalnych środków", takich jak kontrola operacyjna czy dostęp do danych telekomunikacyjnych. W art. 3 Projektu z 2014 r. znajduje się zbyt wiele zwrotów niedookreślonych oraz zwrotów, których definicji legalnych trudno szukać w polskim ustawodawstwie; (2) słusznie ograniczono zadania ABW w zakresie chociażby przestępczości narkotykowej, jednakowoż w innych wypadkach w zakresie działań ABW w zasadzie niewiele się zmienia, a nakierowanie na określony rodzaj zagrożeń i przestępstw będzie "decyzją polityczną" Szefa ABW, jak i Ministra Spraw Wewnętrznych; (3) część chybionych rozwiązań jest wynikiem niskiej "kultury legislacyjnej", w tym wypadku na poziomie Ministerstwa Spraw Wewnętrznych. Możliwe, że uchybienia są wynikiem pośpiesznych prac nad projektami, jednakowoż prace te mają zawsze "wymiar polityczny". W tworzeniu rozwiązań na pewno dużą rolę odegrały interesy samych służb i interes państwa.

Słowa kluczowe: bezpieczeństwo wewnętrzne, porządek konstytucyjny, Agencja Bezpieczeństwa Wewnętrznego